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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,225	06/20/2003	Robert F. Burkholder	JK01507	9167

28268            7590            04/09/2007  
THE BLACK & DECKER CORPORATION  
701 EAST JOPPA ROAD, TW199  
TOWSON, MD 21286

EXAMINER
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GILLAN, RYAN P

ART UNIT	PAPER NUMBER
3746	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/601,225	BURKHOLDER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ryan P. Gillan	3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 January 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-43 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-43 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 20 June 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____. _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

Due to new grounds of rejection this Office Action is made Non-Final.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 13 and 41-43 rejected under 35 U.S.C. 103(a) as being unpatentable over Nolan (6,375,437) in view of Lane (4,400,187). Nolan teaches an air compressor assembly, comprising: an air tank (24) for containing air at an elevated pressure. The air tank having an air inlet port (connected to line 28) and an air outlet port (connected to line 32); an air compressor (14) for supplying air for storage in the air tank through a first tubing (28), the first tubing connecting the air inlet port to the air compressor (clearly seen in figure 1); a second tubing (32) connecting the air outlet port to a manifold assembly (36), the compressed air in the air tank is discharged through the air outlet port, the second tubing, and the manifold assembly during air usage (col. 3 lines 33-43). The air compressor assembly is of a portable type; the air inlet port is positioned at a top wall of the air tank (clearly seen in figure 1).

3. Referring to claims 41-43 Nolan teaches the supplying of an air tank for storing air at an elevated pressure and discharging condensate within the air tank, the air being released from the air tank during air usage; the discharged condensate and

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compressed air are routed through an air outlet tubing, to an air powered tool (col. 1 lines 6-9). The discharging step is performed so that the condensate is discharged in small amounts not harmful to the air powered tool (depending on orientation of the apparatus, condensate would inherently discharge along with the compressed air due to gravity and the location of the discharge port).

4. Nolan fails to teach the air outlet port to the compressor positioned at a bottom portion of the air tank. Lane teaches an air outlet port (in communication with valve 18) positioned at a bottom portion (clearly seen in figure 1, outlet port is positioned at what appears to be the half-way point of the tank and thus, could be considered the bottom half or at the very least the bottom two-thirds of the tank. With the use of hollow conduit 10, the air tank could be positioned in such a way that the outlet port was at the lowest point of the tank as well, due to the moisture filtering capabilities) of a compressed air tank (16) and an open end of a hollow conduit (10) positioned at the bottom portion of the air tank (clearly seen in figure 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the air tank taught by Nolan to incorporate the air outlet port and hollow conduit as taught by Lane as a means of filtering out unwanted moisture in the compressed air (Lane, Abstract).

5. Claims 15 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal (5,399,072) in view of Lane (4,400,187). Westphal teaches an air compressor assembly, comprising: an air tank (14) for containing air at an elevated pressure. The air tank has an air access port therein (connected to the pressure gauge 24), an air compressor (32) for supplying air for storage in the air tank, a first tubing (36)

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connecting the air compressor to a manifold assembly (28), and a second tubing (clearly seen in figure 4 connecting 28 to the tank) connecting the manifold assembly to the air access port. The compressed air in the air tank is discharged through the air access port, the second tubing, and the manifold assembly during air usage (col. 4 lines 46-64). The air compressor assembly is of a portable type.

6. Westphal fails to teach the air outlet port to the compressor positioned at a bottom portion of the air tank. Lane teaches an air outlet port (in communication with valve 18) positioned at a bottom portion (clearly seen in figure 1, outlet port is positioned at what appears to be the half-way point of the tank and thus, could be considered the bottom half or at the very least the bottom two-thirds of the tank. With the use of hollow conduit 10, the air tank could be positioned in such a way that the outlet port way at the lowest point of the tank as well, due to the moisture filtering capabilities) of a compressed air tank (16) and an open end of a hollow conduit (10) positioned at the bottom portion of the air tank (clearly seen in figure 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the air tank taught by Nolan to incorporate the air outlet port and hollow conduit as taught by Lane as a means of filtering out unwanted moisture in the compressed air (Lane, Abstract).

7. Claims 3-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolan in view of Lane, Moore (4,514,019) and Grainger (Industrial and Commercial Equipment and Supplies, General Catalog No. 308, pgs. 1600-1603 (1991)). The combination of Nolan and Kojima et al. teach the limitations of claims 1, 2 and 13, but fail to teach the portable air compressor assembly is enclosed in a shroud and shroud is

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made of plastic. The shroud includes a handle to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air outlet port positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

8. Moore teaches a portable air compressor assembly is enclosed in a shroud (54, 56 & 60) and the shroud is made of plastic (col. 4 line 40). The shroud includes a handle (68) to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air inlet port includes a check valve (167) for preventing air from flowing from the air tank to the air compressor. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nolan to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract).

9. Claims 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal in view of Lane, Moore (4,514,019) and Grainger (Industrial and Commercial Equipment and Supplies, General Catalog No. 308, pgs. 1600-1603 (1991)). The combination of Westphal and Kojima et al. teach the limitations of claims 15 and 16, but fail to teach the portable air compressor assembly is enclosed in a shroud and the shroud is made of plastic. The shroud includes a handle to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The

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air outlet port positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

10. Moore teaches a portable air compressor assembly is enclosed in a shroud (54, 56 & 60) and the shroud is made of plastic (col. 4 line 40). The shroud includes a handle (68) to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air inlet port includes a check valve (167) for preventing air from flowing from the air tank to the air compressor. The air access port located on the bottom of the tank, given the orientation of the apparatus is not fixed and given its portable nature, is usable under different orientations. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract).

11. Claims 28, 29 and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal in view of Strubel (4,828,131). Westphal teaches an air compressor assembly, comprising: an air tank (14) for containing air at an elevated pressure. The air tank having an air access port therein (connected to the pressure gauge 24). An air compressor (32) for supplying air for storage in the air tank. A first tubing (36) connecting the air compressor to a manifold assembly (28). A second tubing (clearly seen in figure 4 connecting 28 to the tank) connecting the manifold assembly to the air access port. The compressed air in the air tank is discharged through the air access port, the second tubing, and the manifold assembly during air usage (col. 4 lines 46-64).

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The air compressor assembly is of a portable type and the air access port is positioned at a top wall of the air tank (clearly seen in figure 1).

12. Westphal fails to teach the air access port being an open end of a centrally hollow conduit positioned inside the air tank. Strubel teaches an air access port (6) being an open end of a centrally hollow conduit (5) positioned inside the air tank (1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the hollow conduit as taught by Strubel as a means of making possible the greatest emptying of fluid from the tank (col. 1 lines 45-52).

13. Claims 30-38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal in view of Strubel and in further view of Moore. Westphal in view of Strubel teach the limitations of claims 28, 29 and 39, but fail to teach the portable air compressor assembly is enclosed in a shroud, the shroud is made of plastic, wherein the shroud includes a handle to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air outlet port positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

14. Moore teaches a portable air compressor assembly is enclosed in a shroud (54, 56 & 60), the shroud is made of plastic (col. 4 line 40). The shroud includes a handle (68) to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air inlet port includes a check valve (167) for preventing

air from flowing from the air tank to the air compressor. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract).

***Response to Arguments***

15. Applicant's arguments with respect to claim 1-27 and 41-43 have been considered but are moot in view of the new ground(s) of rejection. As cited above Lane teaches the claimed limitation of an air outlet/access port positioned at the bottom of an air tank and the motivation to combine the references is also cited above.

16. In regard to the arguments presented in view of claims 28-40, that Strubel is not analogous art because the tank is primarily used for liquids. This is not found to be persuasive because the tank taught by Strubel contains pressurized/compressed gas and therefore is easily capable of use in conjunction with an air compressor. It is also unnecessary for the prior art to address the same problems identified by the Applicant as long as the structure taught by the prior art satisfies the limitations of the claims and there is motivation to combine the references. As cited above it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the hollow conduit as taught by Strubel as a means of making possible the greatest emptying of fluid from the tank (col. 1 lines 45-52).

17. A recitation with respect to the material intended to be worked upon by a claimed apparatus does not impose any structural limitations upon the claimed apparatus which

differentiates it from the prior art apparatus satisfying the structural limitations of the claims, as is the case here.

MPEP ss 22.251

***Conclusion***

18. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan P. Gillan whose telephone number is 571-272-8381. The examiner can normally be reached on 8:00 am - 4:30 pm; Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ANTHONY D. STASHICK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700